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OFFICE OF PETITIONS

In re Application of
Akio Katsume et al.
Application No. 09/689,774
Filed: October 13, 2000
Attorney Docket No: 018976-181

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ON PETITION

This is a decision on the petition filed July 23, 2004 and resubmitted May 20, 2005, to restart the period for response due to non-receipt. In accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513, this petition is treated under 37 CFR 1.181.

The petition is **GRANTED**.

This application became abandoned on April 30, 2004, for failure to file a timely response to the non-Final Office Action mailed January 29, 2004, which set a three (3) month statutory period for reply. The instant petition and this decision precede the mailing of the Notice of Abandonment.

Petitioner asserts that the non-Final Office Action was never received.

Although, the file record now discloses the addition of "BUCHANAN INGERSOL PC" in the address, the file record does confirm that the Office Action was mailed to the address of record, without the inclusion of "BUCHANAN INGERSOL PC" and addressed to BURNS, DOANE, SWECKER & MATHIS, which was, in 2004, the same address used on all correspondences from the USPTO. There does not appear to be a change of address of record in the time period the non-Final Office Action was mailed. Petitioner has provided a copy of the docket report, wherein receipt of the Office Action mailed January 29, 2004 would have been filed, had it been received. To show that the Notice mailed January 29, 2004 was not received, petitioner also explains that after searching the file jacket it was concluded that no correspondence was received for this matter from the USPTO,

In that the statement from the petitioner and the exhibit from the docket record for the instant matter show no entry indicating receipt of the non-Final Office Action mailed January 29, 2004, it is apparent that it was not received. The evidence submitted corroborates non-receipt of the Office Action. Furthermore, a review of the file record

reveals that the office communication mailed on January 29, 2004 was returned by the USPS and no apparent reason is readily visible. In fact, the first page of the correspondence which bears the address is not included in what was returned by the USPS.

In view of the facts set forth in the petition, it is concluded that the Office Action was never received at the address of record. Accordingly, the holding of abandonment is withdrawn and no petition fee is due.

This matter is being referred to Technology Center 3726 for a re-mailing of the non-Final Office Action and for a restarting of the period for response.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.



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